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9 Attorneys for Defendant
10 Allstate Insurance Company, solely as successor-
11 in-interest to Northbrook Excess & Surplus
Insurance Company, formerly known as
Northbrook Insurance Company

14 || Nammo Talley, Inc.,

Case No. 11-CV-01007-JAT

15 Plaintiff,

**ANSWER OF ALLSTATE
INSURANCE COMPANY TO
PLAINTIFF NAMMO TALLEY'S
COMPLAINT**

17 Allstate Insurance Company (solely as
18 successor in interests to Northbrook Excess
19 and Surplus Insurance Company, formerly
known as Northbrook Insurance Company);
20 Continental Casualty Company; Globe
21 Indemnity Company; National Union Fire
Insurance Company of Pittsburgh, PA;
Transportation Insurance Company; ABC
Corporations; and XYZ Companies,

DEMAND FOR JURY TRIAL

22 Defendants.

24 Defendant ALLSTATE INSURANCE COMPANY, solely as successor-in-interest
25 to Northbrook Excess and Surplus Insurance Company, formerly known as Northbrook
26 Insurance Company (“Allstate”) hereby answers the Complaint (“Complaint”) of Plaintiff
27 NAMMO TALLEY, INC. formerly known as Talley Industries, Inc. (“Plaintiff”) filed in
28 the United States District Court for the District of Arizona, by admitting, denying, and

1 alleging as follows:

2 **THE PARTIES**

3 1. Allstate lacks sufficient information upon which to admit or deny the truth
4 of the allegations in paragraph 1 of the Complaint and, on that basis, denies the same.

5 2. Allstate admits policies 63-300-019 and 63-002-569 were issued by
6 Northbrook Insurance Company to Talley Industries (the “Northbrook Policies”). Allstate
7 lacks information upon which to admit or deny the truth of the remaining allegations in
8 paragraph 2 of the Complaint and, on that basis, denies the same.

9 3. In answering paragraph 3 of the Complaint, Allstate admits that it is an
10 Illinois corporation, with its principal place of business in Illinois. Allstate also admits
11 that it is the successor-in-interest to Northbrook Excess and Surplus Insurance Company,
12 formerly known as Northbrook Insurance Company.

13 4. Allstate lacks sufficient information upon which to admit or deny the truth
14 of the allegations in paragraph 4 of the Complaint and, on that basis, denies the same.

15 5. Allstate lacks sufficient information upon which to admit or deny the truth
16 of the allegations in paragraph 5 of the Complaint and, on that basis, denies the same.

17 6. Allstate lacks sufficient information upon which to admit or deny the truth
18 of the allegations in paragraph 6 of the Complaint and, on that basis, denies the same.

19 7. Allstate lacks sufficient information upon which to admit or deny the truth
20 of the allegations in paragraph 7 of the Complaint and, on that basis, denies the same.

21 8. In answering paragraph 8 of the Complaint, Allstate admits that policies 63-
22 300-019 and 63-002-569 were issued by Northbrook Insurance Company and that it wrote
23 liability insurance. Allstate lacks sufficient information upon which to admit or deny the
24 truth of the allegations in paragraph 8 relating to the other defendant insurers and, on that
25 basis, denies the same. Allstate denies the remaining allegations in paragraph 8.

26 **JURISDICTION AND VENUE**

27 9. In answering paragraph 9 of the Complaint, Allstate re-alleges each of its
28 responses to paragraphs 1 through 8, inclusive, as though fully set forth herein.

10. The allegations in Paragraph 10 of the Complaint are conclusions of law to which no response is required. To the extent a response is required, Allstate denies the same.

11. The allegations in Paragraph 11 of the Complaint are conclusions of law to which no response is required. To the extent a response is required, Allstate denies the same.

12. The allegations in Paragraph 12 of the Complaint are conclusions of law to which no response is required. To the extent a response is required, Allstate denies the same.

GENERAL ALLEGATIONS

13. In answering paragraph 13 of the Complaint, Allstate re-alleges each of its responses to paragraphs 1 through 12, inclusive, as though fully set forth herein.

14. Allstate states that paragraph 14 of the Complaint is a declaratory statement characterizing the nature of Plaintiff's Complaint, and that no response is required. To the extent a response is required, Allstate denies the same.

The Underlying Liability

15. Allstate lacks sufficient information upon which to admit or deny the truth of the allegations in paragraph 15 of the Complaint and, on that basis, denies the same.

16. Allstate denies the allegations of paragraph 16.

17. Allstate lacks sufficient information upon which to admit or deny the truth of the allegations in paragraph 17 of the Complaint and, on that basis denies the same.

18. To the extent the allegations of paragraph 18 of the Complaint are directed to defendants other than Allstate, no answer is required. In any event, Allstate lacks sufficient information upon which to admit or deny the truth of the allegations in paragraph 18 of the Complaint and, on that basis, denies the same.

19. In answering paragraph 19 of the Complaint, Allstate states that the terms of the Consent Judgment speak for themselves. Allstate lacks sufficient information upon which to admit or deny the truth of the remaining allegations in paragraph 19 and, on that

1 basis, denies the same.

2 20. Allstate lacks sufficient information upon which to admit or deny the truth
 3 of the allegations in paragraph 20 of the Complaint and, on that basis, denies the same.

4 21. Allstate lacks sufficient information upon which to admit or deny the truth
 5 of the allegations in paragraph 21 of the Complaint and, on that basis, denies the same.

6 22. Allstate lacks sufficient information upon which to admit or deny the truth
 7 of the allegations in paragraph 22 of the Complaint and, on that basis, denies the same.

8 23. Allstate lacks sufficient information upon which to admit or deny the truth
 9 of the allegations in paragraph 23 of the Complaint and, on that basis, denies the same.

10 24. Allstate lacks sufficient information upon which to admit or deny the truth
 11 of the allegations in paragraph 24 of the Complaint and, on that basis, denies the same.

12 **Water Bore Out Area**

13 25. Allstate lacks sufficient information upon which to admit or deny the truth
 14 of the allegations in paragraph 25 of the Complaint and, on that basis, denies the same.

15 26. Allstate lacks sufficient information upon which to admit or deny the truth
 16 of the allegations in paragraph 26 of the Complaint and, on that basis, denies the same.

17 27. Allstate lacks sufficient information upon which to admit or deny the truth
 18 of the allegations in paragraph 27 of the Complaint and, on that basis, denies the same.

19 28. Allstate lacks sufficient information upon which to admit or deny the truth
 20 of the allegations in paragraph 28 of the Complaint and, on that basis, denies the same.

21 29. In answering paragraph 29 of the Complaint, Allstate denies that the
 22 leaching of perchlorate from ponds into groundwater was unintentional and unexpected.
 23 Allstate lacks sufficient information upon which to admit or deny the truth of the
 24 remaining allegations of paragraph 29 and on that basis, denies the same.

25 **Thermal Treatment Unit**

26 30. Allstate lacks sufficient information upon which to admit or deny the truth
 27 of the allegations in paragraph 30 of the Complaint and, on that basis, denies the same.

28 31. Allstate lacks sufficient information upon which to admit or deny the truth

1 of the allegations in paragraph 31 of the Complaint and, on that basis, denies the same.

2 32. Allstate lacks sufficient information upon which to admit or deny the truth
3 of the allegations in paragraph 32 of the Complaint and, on that basis, denies the same.

4 33. Allstate denies that contamination from the disposal of solid propellant was
5 unexpected. Allstate lacks sufficient information upon which to admit or deny the truth of
6 the remaining allegations in paragraph 33 of the Complaint and, on that basis, denies the
7 same.

8 34. Allstate denies that contamination from the burning of propellants at the Site
9 was unintentional. Allstate lacks sufficient information upon which to admit or deny the
10 truth of the remaining allegations in paragraph 34 of the Complaint and, on that basis,
11 denies the same.

12 The Policies

13 35. Allstate lacks sufficient information upon which admit or deny the truth of
14 the allegations in paragraph 35 of the Complaint and, on that basis, denies the same.

15 36. Allstate admits that the Northbrook Policies were issued by Northbrook
16 Insurance Company and that such policies provide excess insurance subject to the terms,
17 conditions, limitations and exclusions in each policy. Allstate denies the remaining
18 allegations in paragraph 36 of the Complaint to the extent they relate to Allstate. Allstate
19 lacks information upon which to admit or deny the truth of the allegations in paragraph 36
20 to the extent they relate to the other defendant insurers and, on that basis, denies the same.

21 37. The allegations in paragraph 37 are introductory statements for which no
22 response is required. To the extent a response is required, Allstate denies the same.

23 38. Allstate states that the terms of the Northbrook Policies speak for
24 themselves. Allstate denies the remaining allegations in paragraph 38 of the Complaint to
25 the extent they pertain to Allstate and the Northbrook Policies. Allstate lacks sufficient
26 information upon which to admit or deny the truth of the allegations of paragraph 38 of
27 the Complaint to the extent they pertain to the other defendant insurers and, on that basis,
28 denies the same.

1 39. Allstate denies that the policy language quoted in paragraph 39 of the
2 Complaint is contained in the Northbrook Policies. Allstate lacks sufficient information
3 upon which to admit or deny the truth of the remaining allegations in paragraph 39 of the
4 Complaint and, on that basis, denies the same.

5 40. Allstate states that the terms of the Northbrook Policies speak for
6 themselves. Allstate denies that the Northbrook Policies contain provisions that are
7 generally similar to the insurance provisions cited by Plaintiff. Allstate lacks sufficient
8 information upon which to admit or deny the truth of the remaining allegations in
9 paragraph 40 of the Complaint and, on that basis, denies the same.

10 41. Allstate lacks sufficient information upon which to admit or deny the truth
11 of the allegations in paragraph 41 of the Complaint and, on that basis, denies the same.

12 42. Allstate lacks sufficient information upon which to admit or deny the truth
13 of the allegations in paragraph 42 of the Complaint and, on that basis, denies the same.

14 43. Allstate states that the terms of the Northbrook Policies speak for
15 themselves. Allstate denies the allegations in paragraph 43 of the Complaint insofar as
16 they relate to Allstate and the Northbrook Policies. Allstate lacks sufficient information
17 upon which to admit or deny the truth of the remaining allegations in paragraph 43 of the
18 Complaint and, on that basis denies the same.

19 44. Allstate denies the allegations in paragraph 44 of the Complaint insofar as
20 they relate to Allstate and the Northbrook Policies. Allstate lacks sufficient information
21 upon which to admit or deny the truth of the remaining allegations in paragraph 44 of the
22 Complaint and, on that basis, denies the same.

23 45. Allstate lacks information upon which to admit or deny the truth of the
24 allegations in paragraph 45 of the Complaint and, on that basis, denies the same.

25 46. Allstate denies the allegations in paragraph 46 of the Complaint insofar as
26 they relate to Allstate and the Northbrook Policies. Allstate lacks sufficient information
27 upon which to admit or deny the truth of the remaining allegations in paragraph 46 of the
28 Complaint and, on that basis, denies the same.

1 47. Allstate denies the allegations in paragraph 47 of the Complaint insofar as
 2 they relate to Allstate and the Northbrook Policies. Allstate lacks sufficient information
 3 upon which to admit or deny the truth of the remaining allegations in paragraph 47 of the
 4 Complaint and, on that basis, denies the same.

5 48. The allegations of paragraph 48 of the Complaint are conclusions of law to
 6 which no answer is required. To the extent an answer is required, Allstate denies the
 7 allegations in paragraph 48 of the Complaint.

8 49. The allegations in paragraph 49 of the Complaint are conclusions of law to
 9 which no answer is required. To the extent an answer is required, Allstate denies the
 10 allegations paragraph 49 of the Complaint.

11 50. The allegations of paragraph 50 are conclusions of law to which no answer
 12 is required. To the extent that an answer is required, Allstate answers that its obligations
 13 to its insureds under the Northbrook Policies are delineated by the specific terms of the
 14 Northbrook Policies. Allstate further denies that it has a duty to defend or indemnify
 15 Plaintiff in connection with the underlying claims under the terms of the Northbrook
 16 Policies. Allstate denies the remaining allegations in paragraph 50 of the Complaint
 17 insofar as they pertain to Allstate and the Northbrook Policies. Allstate lacks sufficient
 18 information upon which to admit or deny the truth of the allegations with respect to the
 19 other defendants and, on that basis, denies the same.

20 51. Allstate denies the allegations in paragraph 51 of the Complaint insofar as
 21 they pertain to Allstate and the Northbrook Policies. Allstate lacks information upon
 22 which to admit or deny the truth of the remaining allegations in paragraph 51 of the
 23 Complaint and, on that basis, denies the same.

24 52. Allstate states that the allegations in paragraph 52 of the Complaint are legal
 25 conclusions to which no answer is required. To the extent an answer is required, Allstate
 26 states that its obligations to its insureds under the Northbrook Policies are delineated by
 27 the specific terms of the Northbrook Policies as interpreted by the applicable law. Allstate
 28 further answers that Plaintiff's allegations in paragraph 52 are premature as there has not

1 been any determination that Nammo Talley is an insured under the Northbrook Policies or
2 that Arizona law applies to this lawsuit. Allstate lacks sufficient information upon which
3 to admit or deny the truth of the allegations in paragraph 52 of the Complaint and, on that
4 basis, denies the same.

5 53. Allstate denies the allegations in paragraph 53 of the Complaint insofar as
6 they relate to Allstate and the Northbrook Policies. Allstate lacks sufficient information
7 upon which to admit or deny the truth of the remaining allegations in paragraph 53 of the
8 Complaint and, on that basis, denies the same.

9 54. Allstate denies the allegations in paragraph 54 of the Complaint insofar as
10 they relate to the Northbrook Policies. Allstate lacks sufficient information upon which to
11 admit or deny the truth of the remaining allegations in paragraph 54 of the Complaint and,
12 on that basis, denies the same.

13 55. Allstate admits that it has not acknowledged any coverage obligation for the
14 claims in issue in this Complaint because they do not fall within the scope of coverage
15 afforded by the Northbrook Policies. Allstate denies the remaining allegations in
16 paragraph 55 of the Complaint insofar as they relate to Allstate and the Northbrook
17 Policies. Allstate lacks sufficient information upon which to admit or deny the truth of the
18 remaining allegations in paragraph 55 of the Complaint and, on that basis, denies the
19 same.

20 56. Allstate denies the allegations in paragraph 56 of the Complaint insofar as
21 they relate to Allstate and the Northbrook Policies. Allstate lacks sufficient information
22 upon which to admit or deny the truth of the remaining allegations in paragraph 56 of the
23 Complaint and, on that basis, denies the same.

24 57. Allstate lacks sufficient information upon which to admit or deny the truth
25 of the allegations in paragraph 57 of the Complaint and, on that basis, denies the same.

26 58. Allstate denies the allegations in paragraph 58 of the Complaint insofar as
27 they relate to Allstate and the Northbrook Policies. Allstate lacks sufficient information
28 upon which to admit or deny the truth of the remaining allegations in paragraph 58 of the

1 Complaint and, on that basis, denies the same.

2 59. Allstate admits that it has not acknowledged a duty to defend or indemnify
 3 Plaintiff with respect to the claims in issue in the Complaint because no such obligations
 4 exist under the terms of the Northbrook Policies. Allstate lacks sufficient information
 5 upon which to admit or deny the truth of the remaining allegations in paragraph 59 of the
 6 Complaint and, on that basis, denies the same.

7 60. Allstate denies the allegations in paragraph 60 of the Complaint insofar as
 8 they relate to Allstate and the Northbrook Policies. Allstate lacks sufficient information
 9 upon which to admit or deny the truth of the remaining allegations in paragraph 60 of the
 10 Complaint and, on that basis, denies the same.

11 61. Allstate denies the allegations in paragraph 61 of the Complaint insofar as
 12 they relate to Allstate and the Northbrook Policies. Allstate lacks sufficient information
 13 upon which to admit or deny the truth of the remaining allegations in paragraph 61 of the
 14 Complaint and, on that basis, denies the same.

15 **COUNT I**

16 **(Declaratory Judgment)**

17 62. In answering paragraph 62 of the Complaint, Allstate re-alleges each of its
 18 answers to paragraphs 1 through 61, inclusive, as though fully set forth herein.

19 63. Allstate states that paragraph 63 of the Complaint is a legal conclusion to
 20 which an answer is not required. To the extent an answer is required, Allstate lacks
 21 sufficient information upon which to admit or deny the truth of the allegations in
 22 paragraph 63 and, on that basis, denies the same.

23 64. Allstate states that paragraph 64 of the Complaint is a declaratory statement
 24 of the nature of Plaintiff's claim for which an answer is not required. To the extent an
 25 answer is required, Allstate lacks sufficient information upon which to admit or deny the
 26 truth of the allegations in paragraph 64 and, on that basis, denies the same.

27 65. Allstate denies the allegations of paragraph 65 of the Complaint insofar as
 28 they relate to Allstate. Allstate lacks sufficient information upon which to admit or deny

1 the truth of the remaining allegations in paragraph 65 and, on that basis, denies the same.

2 66. Allstate states that paragraph 66 of the Complaint is a declaratory statement
 3 of the nature of Plaintiff's claims, and that an answer to the statement is not required. To
 4 the extent an answer is required, Allstate denies the allegations in paragraph 66 of the
 5 Complaint insofar as they pertain to Allstate and the Northbrook Policies. Allstate further
 6 denies that Plaintiff is entitled to any of the relief it has requested in connection with this
 7 claim for relief. Allstate lacks sufficient information upon which to admit or deny the
 8 truth of the allegations in paragraph 66 to the extent they pertain to other defendants and,
 9 on that basis, denies the same.

10 **COUNT II**

11 **(Breach of Contract)**

12 67. In answering paragraph 67 of the Complaint, Allstate re-alleges each of its
 13 answers to paragraphs 1 through 66, inclusive, as though fully set forth herein.

14 68. Allstate admits that it has not acknowledged a duty to defend or indemnify
 15 Plaintiff in connection with the claims in issue in this Complaint because they do not fall
 16 within the coverage afforded by the Northbrook Policies, based on the information that
 17 has been provided to Allstate to date. Allstate denies the remaining allegations of
 18 paragraph 68 of the Complaint insofar as they relate to Allstate and the Northbrook
 19 Policies. Allstate lacks information upon which to admit or deny the truth of the
 20 remaining allegations in paragraph 68 and, on that basis, denies the same.

21 69. Allstate denies the allegations of paragraph 69 of the Complaint insofar as
 22 they relate to Allstate and the Northbrook Policies. Allstate further denies that Plaintiff is
 23 entitled to any of the relief it has requested with respect to this claim for relief. Allstate
 24 lacks information upon which to admit or deny the truth of the remaining allegations in
 25 paragraph 69 of the Complaint and, on that basis, denies the same.

26 **COUNT III**

27 **(Breach of the Duty of Good Faith and Fair Dealing)**

28 70. In answering paragraph 70 of the Complaint, Allstate re-alleges each of its

1 answers to paragraphs 1 through 69, inclusive, as though fully set forth herein.

2 71. Allstate states that paragraph 71 of the Complaint is a legal conclusion for
 3 which an answer is not required. To the extent an answer is required, Allstate answers
 4 that Plaintiff's allegations are premature insofar as there has been no determination that
 5 Nammo Talley is an insured under the Northbrook Policies or that Allstate owes any
 6 duties to it. Allstate, therefore, lacks sufficient information upon which to admit or deny
 7 the truth of the allegations in paragraph 71 and, on that basis, denies the same.

8 72. Allstate denies the allegations of paragraph 72 of the Complaint insofar as
 9 they relate to Allstate and the Northbrook Policies. Allstate lacks information upon which
 10 to admit or deny the truth of the remaining allegations in paragraph 72 and, on that basis,
 11 denies the same.

12 73. Allstate states that the allegations in paragraph 73 of the Complaint are legal
 13 conclusions to which no answer is required. To the extent an answer is required, Allstate
 14 denies the allegations of paragraph 73 of the Complaint insofar as they relate to Allstate.
 15 Allstate lacks information upon which to admit or deny the truth of the remaining
 16 allegations in paragraph 73 and, on that basis, denies the same.

17 74. Allstate denies the allegations of paragraph 74 of the Complaint insofar as
 18 they relate to Allstate and the Northbrook Policies. Allstate further denies that Plaintiff is
 19 entitled to any of the relief it has requested with respect to this claim for relief. Allstate
 20 lacks information upon which to admit or deny the truth of the remaining allegations in
 21 paragraph 74 and, on that basis, denies the same.

22 COUNT IV

23 (Common Law Negligent Misrepresentation and Violation of A.R.S. §20-443)

24 75. In answering paragraph 75 of the Complaint, Allstate re-alleges each of its
 25 responses to paragraphs 1 through 74, inclusive, as though fully set forth herein.

26 76. Allstate denies the allegations of paragraph 76 of the Complaint insofar as
 27 they relate to Allstate. Allstate lacks information upon which to admit or deny the truth of
 28 the remaining allegations in paragraph 76 and, on that basis, denies the same.

77. Allstate lacks information upon which to admit or deny the truth of the allegations in paragraph 77 and, on that basis, denies the same.

78. Allstate denies the allegations of paragraph 78 of the Complaint insofar as they relate to Allstate. Allstate lacks information upon which to admit or deny the truth of the remaining allegations in paragraph 78 and, on that basis, denies the same.

79. Allstate denies the allegations of paragraph 79 of the Complaint insofar as they relate to Allstate. Allstate lacks information upon which to admit or deny the truth of the remaining allegations in paragraph 79 and, on that basis, denies the same.

80. Allstate denies the allegations of paragraph 80 of the Complaint insofar as they relate to Allstate. Allstate further denies that Plaintiff is entitled to the relief it has requested with respect to this claim for relief. Allstate lacks information upon which to admit or deny the truth of the remaining allegations in paragraph 80 and, on that basis, denies the same.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

81. As a first affirmative defense, Allstate states that the Complaint, and each of the claims for relief alleged therein, fails to allege facts sufficient to state a claim against Allstate for which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

(Subject to Policy Terms)

82. As a second affirmative defense, Allstate states that the duty of Allstate, if any, to defend or indemnify Plaintiff, or to contribute to the defense or indemnification of Plaintiff, or to reimburse Plaintiff for any amounts, is limited by and is subject to all of the terms, conditions, exclusions, limits of liability, retentions, limitations, and other provisions contained in the Northbrook Policies.

THIRD AFFIRMATIVE DEFENSE

(No Coverage for Punitive or Exemplary Damages)

1 83. As a third affirmative defense, Allstate states that coverage under the
2 Northbrook Policies is barred to the extent that Plaintiff seeks coverage for punitive or
3 exemplary damages, fines, and/or penalties, recovery for which is precluded by operation
4 of law (including the U.S. Constitution, including without limitation, Article 1, Section 8,
5 Amendment V and Amendment XIV), public policy, and the terms, exclusions,
6 conditions, and limitations of said policies.

FOURTH AFFIRMATIVE DEFENSE

(Pollution Exclusion)

9 84. As a fourth affirmative defense, Allstate states that Plaintiff's claims are
10 barred by the pollution exclusions contained in the Northbrook Policies, and by
11 endorsement 4 of Northbrook policy 63-002-569, which provides that there is no coverage
12 for the cost of removing, nullifying or cleaning-up seeping, polluting or contaminating
13 substances.

FIFTH AFFIRMATIVE DEFENSE

(Damage to Property Owned by the Insured)

16 85. As a fifth affirmative defense, Allstate states that Plaintiff's claims are
17 barred or limited by the "owned property" exclusion in the Northbrook Policies, and by
18 Endorsement 2 to Northbrook policy 63-002-563, which provides that there is no
19 coverage for property damage to personal property owned or occupied by or rented to any
20 insured, among other things.

SIXTH AFFIRMATIVE DEFENSE

(No “Occurrence”)

23 86. As a sixth affirmative defense, Allstate alleges that Plaintiff's claims are
24 barred or limited to the extent that Plaintiff seeks coverage for "personal injuries" or
25 "property damage" that was not caused by an "occurrence" as those terms are defined in
26 the Northbrook Policies.

SEVENTH AFFIRMATIVE DEFENSE

(No “Damages” on Account of “Property Damage” or “Personal Injuries”)

1 87. As a seventh affirmative defense, Allstate states that Plaintiff's claims are
2 barred or limited to the extent that Plaintiff seeks coverage for amounts that are not
3 "damages" on account of "property damage" or "personal injuries" as those terms are
4 defined in the Northbrook Policies.

EIGHTH AFFIRMATIVE DEFENSE

(No “Occurrence”, “Personal Injuries” or “Property Damage”

During the Policy Period)

8 88. As an eighth affirmative defense, Allstate states that Plaintiff's claims are
9 barred or limited to the extent that Plaintiff seeks coverage for "personal injuries or
10 "property damage" that did not take place during the respective Northbrook Policy period,
11 and to the extent that Plaintiff seeks coverage for any "personal injuries" or "property
12 damage" that did not result in an "occurrence" during the respective Northbrook Policy
13 period.

NINTH AFFIRMATIVE DEFENSE

(Not An “Insured”)

16 89. As a ninth affirmative defense, Allstate states that Plaintiff's claims are
17 barred to the extent that it is not an insured under the Northbrook Policies or to the extent
18 that it seeks payment on behalf of entities who are not insureds.

TENTH AFFIRMATIVE DEFENSE

(No Duty to Defend)

21 90. As a tenth affirmative defense, Allstate states that any duty to defend or to
22 pay or reimburse defense costs is barred or limited by the terms of the Northbrook
23 Policies, including, but not limited to, Condition VIII (“Assistance and Cooperation”).

ELEVENTH AFFIRMATIVE DEFENSE

(“Ultimate Net Loss”)

26 91. As an eleventh affirmative defense, Allstate states that Plaintiff's claims are
27 barred or limited to the extent that the amounts sought do not fall within the definition of
28 "ultimate net loss" as that term is defined in the Northbrook Policies.

TWELFTH AFFIRMATIVE DEFENSE

(Exhaustion of Underlying Insurance)

92. As a twelfth affirmative defense, Allstate states that Plaintiff's claims are barred or limited to the extent that all insurance underlying the Northbrook Policies has not been properly exhausted.

THIRTEENTH AFFIRMATIVE DEFENSE

(Late Notice)

93. As an thirteenth affirmative defense, Allstate states that Plaintiff's claims are barred or limited to the extent the Plaintiff failed to provide timely notice of the claims for which the Plaintiff seeks coverage.

FOURTEENTH AFFIRMATIVE DEFENSE

(Voluntary Payments)

94. As a fourteenth affirmative defense, Allstate states that Plaintiff's claims are barred to the extent that Plaintiff incurred any obligation or entered into any agreement without the express consent of Allstate.

FIFTEENTH AFFIRMATIVE DEFENSE

(Impairment of Subrogation, Indemnity and Contribution)

95. As a fifteenth affirmative defense, Allstate states that Plaintiff's claims are barred or limited to the extent Allstate's rights of subrogation, indemnity or contribution have been impaired.

SIXTEENTH AFFIRMATIVE DEFENSE

(Event Not Contingent or Unknown)

96. As a sixteenth affirmative defense, Allstate states that Plaintiff's claims are barred or limited to the extent that Plaintiff seeks coverage for any claim, event, occurrence, or loss which was in progress or was not contingent or unknown at or before the time the respective Northbrook Policies were issued.

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SEVENTEENTH AFFIRMATIVE DEFENSE

(Statute of Limitations)

97. As a seventeenth affirmative defense, Allstate states that Plaintiff's claims are barred or limited by the applicable statute of limitations.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Waiver, Estoppel, Laches and Unclean Hands)

98. As an eighteenth affirmative defense, Allstate states that Plaintiff's claims are barred or limited by the equitable doctrines of waiver, estoppel, laches, and unclean hands.

NINETEENTH AFFIRMATIVE DEFENSE

(Aircraft Product Exclusions)

99. As a nineteenth affirmative defense, Allstate states that Plaintiff's claims are barred or limited by the aircraft product exclusions contained in the Northbrook Policies.

TWENTIETH AFFIRMATIVE DEFENSE

(Other Insurance)

100. As a twentieth affirmative defense, Allstate states that Plaintiff's claims are barred or limited by the "other insurance" provisions in the Northbrook Policies.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(Failure to Sue Necessary Party)

101. As a twenty-first affirmative defense, Allstate states that Plaintiff's claims are barred or limited to the extent Plaintiff has failed to sue a party necessary to the resolution of its claims.

TWENTY-SECOND AFFIRMATIVE DEFENSE

(No Suit or Claim)

102. As a twenty-second affirmative defense, Allstate states that there is no duty to defend or indemnify the insured for any matters that do not constitute a suit or claim within the meaning of the Northbrook Policies.

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TWENTY-FIFTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

103. As a twenty-fifth affirmative defense, Allstate states that Plaintiff's claims
 are barred or limited to the extent that Plaintiff failed to mitigate some or all of its alleged
 damages.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

(Prior Insurance/Noncumulation)

104. As a twenty-sixth affirmative defense, Allstate states that Plaintiff's claims
 are barred or limited by the "Prior Insurance and Noncumulation of Liability" and the
 Noncumulation of Liability – Same Occurrence" conditions contained in the Northbrook
 Policies.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

(Payment of Defense Costs)

105. As a twenty-seventh affirmative defense, Allstate states that any obligation
 on the part of Allstate to pay or reimburse defense costs, if any such obligation exists, is
 limited to a duty to indemnify the insured for those reasonable and necessary costs
 incurred by the insured in the defense "suits" or claims that have been proven to fall
 within the scope of the respective Northbrook policy's coverage.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

(No Assignment)

106. As a twenty-eighth affirmative defense, Allstate states that Plaintiff's claims
 are barred or limited to the extent that there has been any assignment of interest under the
 Northbrook Policies without Allstate's consent.

TWENTY-NINTH AFFIRMATIVE DEFENSE

(Third Party Fault)

107. As a twenty-ninth affirmative defense, Allstate states that any loss, harm,
 injury, or damage suffered by Plaintiff was caused or contributed to by the acts and/or
 omissions of third parties, including but not limited to parties not named in this action,

1 and therefore, liability or responsibility for Plaintiff's alleged losses, damages and
 2 injuries, if any, must be allocated or apportioned among those responsible parties.

3 **THIRTIETH AFFIRMATIVE DEFENSE**

4 (Exhaustion of Limits of Liability)

5 108. As a thirtieth affirmative defense, Allstate states that coverage for Plaintiff's
 6 claims is barred or limited to the extent that the Northbrook Policy limits have been
 7 exhausted by payment of other claims.

8 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

9 (Self-Insurance and/or Insolvency)

10 109. As a thirty-first affirmative defense, Allstate states that Plaintiff's claims are
 11 barred or limited to the extent Plaintiff must assume responsibility or liability for periods
 12 of self-insurance, periods of insolvency of other insurers, and periods where other policies
 13 are unavailable for other reasons.

14 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

15 (Retained Limit)

16 110. As a thirty-second affirmative defense, Allstate states that Plaintiff's claims
 17 are barred or limited to the extent that the retained limit(s) applicable to its claims have
 18 not been paid.

19 **THIRTY-THIRD AFFIRMATIVE DEFENSE**

20 (Applicable Limits)

21 111. As a thirty-third affirmative defense, Allstate states that there is no
 22 obligation under the Northbrook Policies for any amounts in excess of the applicable
 23 limits of liability under each policy.

24 **THIRTY-FOURTH AFFIRMATIVE DEFENSE**

25 (No Actual Controversy)

26 112. As a thirty-fourth affirmative defense, Allstate states that Plaintiff's causes
 27 of action are subject to dismissal to the extent there is no actual or justiciable controversy
 28 involving the Northbrook Policies.

THIRTY-FIFTH AFFIRMATIVE DEFENSE

(Failure to Maintain Underlying Insurance)

113. As a thirty-fifth affirmative defense, Allstate states that Plaintiff's causes of action are barred or limited by the failure to maintain underlying insurance as required by the terms of the Northbrook Policies.

THIRTY-SIXTH AFFIRMATIVE DEFENSE

(Loss Payable)

114. As a thirty-sixth affirmative defense, Allstate states that Plaintiff's claims are barred or limited by the failure to comply with the "Loss Payable" condition in each Northbrook Policy.

THIRTY-SEVENTH AFFIRMATIVE DEFENSE

(Apportionment)

115. As a thirty-seventh affirmative defense, Allstate states that, Plaintiff's claims may be barred or limited to the extent other parties, including those who are not parties to this action may be legally, contractually, equitably or otherwise obligated for the damages and/or monies sought by Plaintiff; therefore, in the event of a finding of any liability in favor of Plaintiff against Allstate, an apportionment of liability must be made by the court or jury among all responsible parties in accordance with legal and equitable principles.

THIRTY-EIGHTH AFFIRMATIVE DEFENSE

(Cooperation Clause)

116. As a thirty-eighth affirmative defense, Allstate states that Plaintiff's claims are barred or limited by the Plaintiff's failure to comply with the "Assistance and Cooperation" clause in the Northbrook Policies.

THIRTY-NINTH AFFIRMATIVE DEFENSE

(Prophylactic Costs)

117. As a thirty-ninth affirmative defense, Allstate states that Plaintiff's claims are barred to the extent that it seeks to recover costs to prevent future harm.

FORTIETH AFFIRMATIVE DEFENSE

(Misrepresentations)

118. As a fortieth defense, Allstate states that Plaintiff's claims are barred or limited to the extent that there were any material misstatements or omissions of fact by the insured in connection with the issuance of the Northbrook Policies.

FORTY-FIRST AFFIRMATIVE DEFENSE

(Ripeness)

119. As a forty-first defense, Allstate states that Plaintiff's claims are barred to the extent that Plaintiff's liability has not been rendered certain and, therefore, its claims for payment are not ripe.

FORTY-SECOND AFFIRMATIVE DEFENSE

(Compliance with Conditions)

120. As a forty-second affirmative defense, Allstate states that Plaintiff's claims are barred to the extent that Plaintiff has failed to comply with any of the conditions contained in the Northbrook Policies.

FORTY-THIRD AFFIRMATIVE DEFENSE

(Underground Resources Exclusion)

121. As a forty-third affirmative defense, Allstate states that Plaintiffs' claims are barred to the extent they fall within the "Underground Resources" exclusions contained in the Northbrook Policies.

FORTY-FOURTH AFFIRMATIVE DEFENSE

(Entitlement to Offset)

122. As a forty-fourth affirmative defense, Allstate states that it is entitled to a set-off for any amounts paid by or owed by other insurers or third parties.

FORTY-FIFTH AFFIRMATIVE DEFENSE

(Losses Not Yet Arisen or Amounts Not Yet Paid)

123. As a forty-fifth affirmative defense, Allstate states that there is no coverage under the Northbrook Policies to the extent Plaintiff seeks defense or indemnification for

1 losses that have not yet arisen or for amounts Plaintiff has not yet paid.

2 **FORTY-SIXTH AFFIRMATIVE DEFENSE**

3 (Intentional Injury or Damage)

4 124. As a forty-sixth affirmative defense, Allstate states that Plaintiff's claims are
5 barred or limited to the extent any injury or damage was caused intentionally or at the
6 direction of the insured.

7 **FORTY-SEVENTH AFFIRMATIVE DEFENSE**

8 (Intervening Cause)

9 125. As a forty-seventh affirmative defense, Allstate states that Plaintiff's
10 damages, if any, were not the proximate result of Allstate's conduct.

11 **FORTY-EIGHTH AFFIRMATIVE DEFENSE**

12 (Improper Purported Exhaustion)

13 126. As a forty-eighth affirmative defense, Allstate states that Plaintiff's claims
14 may be barred or limited to the extent the insured has improperly applied a per occurrence
15 or aggregate limit and/or has improperly purported to have exhausted the limits of any
16 primary or underlying or lower level policies.

17 **FORTY-NINTH AFFIRMATIVE DEFENSE**

18 (No "Drop Down")

19 127. As a forty-ninth affirmative defense, Allstate states that Plaintiff's causes of
20 action may be barred or limited in that the Northbrook Policies do not require them to
21 drop down or to provide coverage in place of any insurer which has become insolvent or
22 any policy which has become invalid, uncollectible or otherwise unavailable.

23 **FIFTIETH AFFIRMATIVE DEFENSE**

24 (Additional Defenses)

25 128. As a fiftieth affirmative defense, Allstate states that it presently has
26 insufficient knowledge or information to determine whether it may have additional, as yet
27 unstated, defenses available. Allstate reserves the right to assert additional defenses in the
28 event discovery indicates that they would be appropriate.

1 WHEREFORE, Allstate prays for judgment as follows:

- 2 1. That Plaintiff take nothing and be granted no relief by reason of its
3 Complaint;
- 4 2. That the Complaint be dismissed as against Allstate;
- 5 3. That a judicial declaration issue to the effect that Allstate has no duty to
6 defend or indemnify Plaintiff, or to contribute to the defense or indemnification of
7 Plaintiff in connection with the claims asserted in Plaintiff's Complaint;
- 8 4. That Allstate be awarded its reasonable attorney's fees and expenses, costs
9 of suit, and other such and further relief as the Court may deem just and proper.

10 Dated: December 8, 2011

By: s/ Robert S. Murphy

11 Robert S. Murphy (AZ Bar No. 013620)

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19 Attorneys for Defendant
20 Allstate Insurance Company, solely as successor-
in-interest to Northbrook Excess & Surplus
21 Insurance Company, formerly known as
Northbrook Insurance Company

CERTIFICATE OF SERVICE

I hereby certify that on December 8, 2011, I electronically transmitted the attached document entitled:

**ANSWER OF ALLSTATE INSURANCE COMPANY
TO PLAINTIFF NAMMO TALLEY'S COMPLAINT**

to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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TRANSPORTATION
INSURANCE COMPANY

Dated: December 8, 2011

By: s/ Robert S. Murphy
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